

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 214 of 2019

Friday, this the 11th day of December 2020

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Sgt Brijesh Kumar Yadav (service No. 776019-A) S/O Shri Ambika Prasad Yadav, R/O Jai Gurudev Niwas Parikhara Tikhampur, Ballia-UP-277001.

..... Applicant

Ld. Counsel for the : **Shri Shiv Kant Pandey**, Advocate.
Applicant

Versus

1. The Union of India through Defence Secretary, Ministry of Defence, Govt of India, South Block, New Delhi-110010.
2. The Chief of Air Staff, Air HQ Vayu Bhawan, Rafi Marg, New Delhi-110106.
3. Joint Controller Defence Account (Air Force) Subroto Park, New Delhi-110010.
4. The Director, Directorate of Air Veteran, Air HQ, Subroto Park, New Delhi-110010.
5. Gp Capt AV (A&N-Appeals), Directorate of Air Veteran, Air HQ, Subroto Park, New Delhi-110010.

.....Respondents

Ld. Counsel for the
Respondents.

:Shri Shyam Singh,
Central Govt. Standing Counsel

ORDER

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (a) *This Hon'ble Tribunal may graciously be pleased to set aside Part IV of the Release Medical Board, and set aside para 6 of the RMB, vide which the applicant has been denied the disability pension (Annexure A-1 to this O.A.).*
- (b) *This Hon'ble Tribunal may graciously be pleased to set aside the order dated Air HQ/99798/1/776019/16/DAV (DP/RMB) dated 06.09.2016 passed by Respondent No 4 (Annexure A-2 of OA).*
- (c) *This Hon'ble Tribunal may graciously be pleased to set aside the order dated Air HQ/99798/5/39/2018/776019/DP/AV-III (appeals) dated 14.02.2019 passed by Respondent No 5 (Annexure A-4 of O.A.).*
- (d) *This Hon'ble Tribunal may graciously be pleased to direct Respondents to grant disability pension to the applicant, for disability 75% since the date of discharge 30.11.2016 and for life.*
- (e) *This Hon'ble Tribunal may graciously be pleased to direct Respondents to pay the entire arrears which accrued due to grant of disability pension.*
- (f) *This Hon'ble Tribunal may grant any other and further relief to applicant as it deem fit, just and proper in the facts and circumstances of the case.*
- (g) *This Hon'ble Tribunal may award the cost of petition to the applicant.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Air Force on 18.11.1976 and after having completed more than 20 years of service he was discharged from service in low medical category 'A4G2(P)' on 30.11.2016. Prior to discharge from service applicant was brought before Release Medical Board (RMB) held at Military Hospital, Pathankot on 12.05.2016 which assessed the applicant to be suffering from (i) 'Primary Hypertension (ii) Diabetes Mellitus and (iii) Solitary Seizure' @ 30%, 20% and 15-19% respectively (rounded off composite disability for all disabilities @ 50%)

for life neither attributable to nor aggravated by military service (NANA). Disability pension claim preferred by the applicant was rejected vide order dated 08.09.2016. First Appeal against rejection of disability pension claim was rejected vide order dated 14.02.2019. Hence this O.A.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore, any disability suffered by the applicant after joining the service should be considered as attributable to or aggravated by military service and the applicant should be entitled to disability pension. Ld. Counsel for the applicant further submitted that disability pension claim of the applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further submission of Ld. Counsel for the applicant is that since the aforesaid diseases are due to stress and strain related rigors of military service, these should be attributable to or aggravated by military service therefore applicant should be granted disability pension.

4. On the other hand, Ld. Counsel for the respondents argued that since RMB has declared the applicant's disabilities as NANA, he is not entitled to disability pension. Ld. Counsel further submitted that the competent authority has rightly rejected the claim of the applicant's disability pension on the ground of disabilities not related to military service, the same does not need interference and O.A. deserves to be dismissed.

5. Heard the Ld. Counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 213. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:-

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the

onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

7. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to the applicant only by endorsing a cryptic sentence in the proceedings i.e. 'being originated in peace area with no close time association with stress/strain of service in Fd/HAA/CI Ops'. We feel that such a discrimination between peace posting and a posting to Field/High Altitude Area/Counter Insurgency Operations amounts to saying that there is no stress and strain of military service in peace area, which is not the absolute truth. It is trite law that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently, and, unless proved to the contrary to be a consequences of military service. The benefit of doubt therefore shall be rightly extended in favour of the applicant. In the instant case, since the applicant was found to be suffering from disability when he had put in more than 15 years of service, it should be deemed to be aggravated by military service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble

Supreme Court judgment of **Dharamvir Singh** (supra) and the disability of the applicant should be considered as aggravated by military service.

8. In view of the above the applicant is held entitled to 50% disability element for life which shall stand rounded off to 75% disability element for life from the date of his discharge in terms of **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order dated 08.09.2016 (Annexure No A-2 to O.A.) and 14.02.2019 (Annexure No A-4 to O.A.), are set aside. The disability of applicant is to be considered as aggravated by military service and the benefit of rounding off to 75% is extended from the date of discharge. The respondents are directed to complete the entire exercise within four months from today and pay disability pension to applicant alongwith arrears with effect from date of discharge. Default will invite interest @ 8% p.a.

No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 11 December, 2020

rathore